

**THEFT BY EXTORTION**

**(N.J.S.A. 2C:20-5)**

Count\_\_\_\_\_ of the indictment charges defendant with theft by extortion.

**[READ COUNT OF INDICTMENT]**

A provision of our statutes provides in pertinent part:

A person is guilty of theft by extortion if he purposely and unlawfully obtains property of another by extortion.

A person extorts if he/she purposely threatens to

**[CHOOSE APPROPRIATE]**

Inflict bodily injury on or physically confine or restrain anyone or commit any other criminal offense

**OR**

Accuse anyone of an offense or cause charges of an offense to be instituted against any person

**OR**

Expose or publicize any secret or any asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule, or to impair (his/her) credit or business repute.

**OR**

Take or withhold action as an official or cause an official to take or withhold action

**OR**

Bring about or continue a strike, boycott or other collective action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act

**OR**

Testify or provide information or withhold testimony or information with respect to another's legal claim or defense

**OR**

Inflict any other harm which would not substantially benefit the actor but which is calculated to materially harm another person.

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In order to convict defendant of the charge, the State must prove the following elements beyond a reasonable doubt:

1. That defendant obtained the property of another.
2. That defendant obtained that property purposely and unlawfully.
3. That defendant obtained the property by extortion

The first element that the State must prove beyond a reasonable doubt is that defendant obtained the property of another. Obtain in relation to property means to bring about a transfer or an apparent transfer of a legal interest in the property, either to the defendant or to another. Obtain in relation to labor or services means to secure performance of the labor or service.<sup>1</sup>

Property means anything of value, including [**SELECT APPROPRIATE**]: tangible and intangible personal property, trade secrets, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric, gas, steam or other power, financial instruments, information, data, and computer software, in either human readable or computer readable form, copies or originals.<sup>2</sup>

Property of another includes property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.<sup>3</sup> The term property of another is broadly defined so as to include services and intangibles, anything of value.<sup>4</sup> Anything of value is defined as any direct or indirect gain or advantage to any person<sup>5</sup>

The second element that the State must prove beyond a reasonable doubt is that defendant purposely and unlawfully obtained the property.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is

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<sup>1</sup> N.J.S.A. 2C:20-1f.

<sup>2</sup> N.J.S.A. 2C:20-1g.

<sup>3</sup> N.J.S.A. 2C:20-1h.

<sup>4</sup> State v. Dixon, 114 N.J. 111 (1989).

<sup>5</sup> N.J.S.A. 2C:20-1n.

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his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. “With purpose,” “designed,” “with design” or equivalent terms have the same meaning.

The term purposely is a condition of the mind. A condition of the mind cannot be seen. It can only be determined by inference from defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The term unlawful means against the law or illegal.<sup>6</sup>

The third element that the State must prove beyond a reasonable doubt is that defendant obtained the property by extortion. A defendant commits extortion if he/she purposely threatened to:

**[CHOOSE APPROPRIATE]**

Inflict bodily injury on or physically confine or restrain anyone or commit any other criminal offense. Bodily injury means physical pain, illness or any impairment of physical condition.<sup>7</sup> Restrain means to confine, to abridge, to limit, to restrict liberty.<sup>8</sup> Offense means a crime, a disorderly persons offense, or a petty disorderly persons offense.<sup>9</sup>

**OR**

Accuse anyone of an offense or cause charges of an offense to be instituted against any person. Offense means a crime, a disorderly persons offense, or a petty disorderly persons offense.<sup>10</sup>

**OR**

Expose or publicize any secret or any asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule, or to impair (his/her) credit or business repute.

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<sup>6</sup> In an appropriate case, it might be necessary to expand on this definition.

<sup>7</sup> N.J.S.A. 2C:11-1a.

<sup>8</sup> See Model Jury Charges, Criminal, Criminal Restraint, N.J.S.A. 2C:13-2a.

<sup>9</sup> N.J.S.A. 2C:1-14k.

<sup>10</sup> Id.

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**OR**

Take or withhold action as an official or cause an official to take or withhold action.

**OR**

Bring about or continue a strike, boycott or other collective action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act.

**OR**

Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

**OR**

Inflict any other harm which would not substantially benefit the actor but which is calculated to materially harm another person.

The threat may have been either written or spoken, expressly stated or implied from the surrounding circumstances. The threat may have been to injure the victim directly or to injure another person, unrelated to the victim, so long as the threat was intended to intimidate or actually intimidated the victim. The State need not show that any of these threats were carried out. A threat alone, if it enabled defendant to obtain property, is sufficient.

It is no defense that other persons would not have been intimidated by the threat. It is sufficient if you find that the threat was effective as to this victim so as to enable the defendant to obtain property.<sup>11</sup>

The threatened harm need not have been illegal. The defendant may have been privileged or even duty-bound to inflict the harm which he/she threatened. However, if defendant used the threat of harm to coerce a transfer of property, then defendant is guilty of theft by extortion.<sup>12</sup>

**[IF NO AFFIRMATIVE DEFENSE ALLEGED]**

If you find that the State has proven each element beyond a reasonable doubt, then you must find defendant guilty of theft by extortion. If you find that the State has failed to prove any element beyond a reasonable doubt, then you must find defendant not guilty of theft by extortion.

**[AFFIRMATIVE DEFENSE]<sup>13</sup>**

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<sup>11</sup> Final Report of the New Jersey Criminal Law Revision Commission, Vol. II, Commentary, at 227 (1971).

<sup>12</sup> State v. Roth, 289 N.J. Super. 152, 258 (App. Div.), certif. denied, 146 N.J. 68 (1996).

<sup>13</sup> This affirmative defense applies only to N.J.S.A. 2C:20-5b, c, d or f. It is inapplicable to N.J.S.A.

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There is evidence that defendant honestly claimed the property obtained as [restitution] [indemnification for harm done in the circumstances] [as lawful compensation for property or services]. The State must disprove beyond a reasonable doubt that defendant did not obtain the property under an honest claim that the property was rightfully the defendant's. If the State proves beyond a reasonable doubt that defendant obtained the property by threat of extortion and not under an honest claim that the property belonged to defendant, then you must find defendant guilty. If the State fails to prove beyond a reasonable doubt that defendant obtained the property by threat of extortion and not under an honest claim that the property belonged to defendant, then you must find defendant not guilty.